

NJ DEPARTMENT OF COMMUNITY AFFAIRS

OFFICE OF SMART GROWTH

Adopted New Rules: [N.J.A.C. 5:87](#)

Basic Course in Land Use Law and Planning Training Program

Proposed: January 3, 2006 at [38 N.J.R. 37\(a\)](#).

Adopted: May 23, 2006 by Susan Bass Levin, Commissioner, Department of Community Affairs.

Filed: June 21, 2006 as R.2006 d.266, **with substantive and technical changes** not requiring additional public notice and comment (see [N.J.A.C. 1:30-6.3](#)).

Authority: P.L. 2005, c. 133 ([N.J.S.A. 40:55D-8](#), 23.3 and 23.4).

Effective Date: July 17, 2006.

Expiration Date: July 17, 2011.

Summary of Public Comments and Agency Responses:

The Department received comments from Eric L. Snyder, **Planning** Director, Sussex County; Gertrude B. Parton, Chair, Rumson Borough **Planning** Board; Susan E. Craft, Executive Director, New Jersey State Agricultural Development Committee; Stephen M. Flatow, Esq.; Sandy Batty, Executive Director, Association of New Jersey Environment Commissions; Edward J. Buzak, Esq.; Richard I. Clark, Esq.; Sam Race, Township Committee Member, White Township; B. Sachau; Charles W. Foster, Esq., Chatham Borough **Planning** Board; Ponce De Leon Tidwell, Sr.; Stuart R. Koenig, Esq.; Joseph E. Doyle, Executive Director, New Jersey **Planning** Officials; Maria Sartor, Chairman, Scotch Plains **Planning** Board; Carlos Rodrigues, President, New Jersey Chapter, American **Planning** Association; William T. Sutphin, Esq.; Rutgers Center for Government Services; Municipal **Land Use** Center at the College of New Jersey; New Jersey Future; New Jersey Association of **Planning** and Zoning Administrators; New Jersey Chapter American **Planning** Association; and the Regional **Planning** Partnership.

COMMENT: Recognize the economic impact on board members caused by placing additional obligations on volunteer members to undergo the proposed training.

RESPONSE: The Department recognizes the impact on serving board members. The members of the various **land use** boards are volunteers who already dedicate a substantial amount of personal time to serve as board members. The proposed new rules and the authorizing statute place an obligation upon the volunteer members to devote additional personal time to satisfy the educational requirements set forth herein. This is the primary reason for the requirement that the mandated course be no more than five hours and structured to permit completion within one calendar day to minimize the burden.

COMMENT: Recognize the interaction between local zoning and **planning** and agricultural interests.

RESPONSE: The Department acknowledges the importance of respecting ongoing agriculture in New Jersey and the potential for local **land use** decisions to impact the industry. As applicable for

communities where active agriculture has a significant presence, the curriculum for board members should include an overview of the interaction between local zoning and **planning** and right-to-farm issues. See change upon adoption to [N.J.A.C. 5:87-3.3\(a\)3](#).

COMMENT: Language of the original proposal was not clear enough and was inconsistent in places. Descriptions of terms, including who is eligible to be a course provider and the definition of "board," are not sufficient.

RESPONSE: The Department agrees that the original proposed rules could be interpreted as inconsistent, confusing or not clear enough due to insufficient definition of terms. The definition of "board" and the description of who can be an approved course provider have been changed to reflect the concerns of several of the commenters. The term "board" has been expanded to include a municipal **planning** board, zoning board of adjustment or combined board as referenced in [N.J.S.A. 40:55D-23.3\(a\)](#). The description of who is eligible to be an approved course provider has been clarified to include a "person" or "entity" under [N.J.A.C. 5:87-2.3](#).

COMMENT: Several comments were directed at the exemptions and waivers contained in the proposed rules. There was disagreement with several of the proposed statutory exemptions from attendance of the course and the omission of a category of exemption from the statutory language was pointed out.

RESPONSE: The waivers and exemptions are set by the terms of the statute authorizing and requiring the education and **training program** covered by this rule. The waivers and exemptions cannot be reduced or expanded by the rulemaking process, only by legislation. In order to bring this rule into agreement with the authorizing statute ([N.J.S.A. 40:55D-8](#), 23.3 and 23.4), the Department has clarified in [N.J.A.C. 5:87-1.7\(a\)4](#) that exemptions include the following: any person who offers proof of having completed a course in **land use** law and **planning** that is equivalent to or more extensive than that required under the provisions of [N.J.S.A. 40:55D-23.3](#), as set forth in [N.J.A.C. 5:87-3.1](#), within 12 months of the date upon which that person would otherwise be required to demonstrate compliance with the provisions of the "Mandatory Education Bill for **Planning** and Zoning Board Members" ([N.J.S.A. 40:55D-23.3](#) and 23.4), and which, in the determination of the Commissioner, is equivalent to or more extensive than the course defined by the provisions of [N.J.A.C. 5:87-3.1](#). Other suggested changes to these provisions, such as requiring elected officials to take the course, are not authorized or warranted.

COMMENT: The provisions of proposed [N.J.A.C. 5:87-1.8\(c\)](#), specifically the provisions regarding the removal of a municipal **planning** or zoning board member by the Commissioner, are unenforceable and represent a usurpation of the powers of a local governing body.

RESPONSE: The Department agrees that the rule as proposed was unenforceable. The rule has been corrected to address this concern and to set forth an enforceable methodology for removal from a municipal **planning** or zoning board. Pursuant to the Municipal **Land Use** Law (MLUL), the authority to remove a board member rests with the governing body. The language contained in [N.J.A.C. 5:87-1.8\(c\)](#) is revised to require a governing body to remove a board member who does not comply with the provisions of these rules and the authorizing legislation rather than automatic removal contained in the original proposal, to bring this rule into conformance with existing law.

COMMENT: Several comments regarding the content of the curriculum and the requirement of a 10 question test were received. The comments were both in favor and against the testing requirement and in favor of expanding and contracting the curriculum. In addition, some commenters felt that the test did not go into enough depth.

RESPONSE: The authorizing statute required that establishment of the course curriculum and the

administration of the course of study would be developed in conjunction with the New Jersey **Planning** Officials. The current curriculum, including the testing requirement, was established through that process. Upon adoption, [N.J.A.C. 5:87-4.2\(a\)](#) is revised to allow the required test to be "open book" in response to actual experience as related by the initial course providers during the initial round of education courses. The New Jersey **Planning** Officials commented that although the test is an important element, allowing notes and reference materials contributed to the positive learning atmosphere and participation of the class.

Federal Standards Statement

No Federal standards analysis is required because the new rules are not being adopted pursuant to Federal law or in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

CHAPTER 87

BASIC COURSE IN LAND USE LAW AND

PLANNING TRAINING PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

5:87-1.1 Heading and scope

(a) The rules contained in this chapter shall be known as the "Rules for the **Basic Course in Land Use Law and Planning Training Program.**"

(b) These rules are to implement the mandatory **training program** required by P.L. 2005, c. 133 ([N.J.S.A. 40:55D-23.3](#) and 23.4).

(c) These rules govern the prescribed evaluation by the State of the training of a member or alternate member of a municipal **planning** board, zoning board of adjustment or combined board in the State of New Jersey.

5:87-1.2 Authority

These rules are promulgated by the Commissioner of the Department of Community Affairs pursuant to the authority of the "Mandatory Education Bill for **Planning** and Zoning Board Members," (sections 2 and 3 of P.L. 2005, c. 133 ([N.J.S.A. 40:55D-23.3](#) and 23.4)).

5:87-1.3 Intent and purpose

The purpose of the **Training Program** shall be to provide a **basic** understanding of the role and duties of members and alternate members of municipal **planning** boards, zoning boards of adjustment and combined boards as set forth in the Municipal **Land Use Law**, [N.J.S.A. 40:55D-1](#) et seq., and the relationship of their roles and responsibilities to the neighboring municipalities, regional **planning** entities, counties, and State agencies. ***Members are encouraged to continue their education beyond this basic course during their tenure on their respective board(s).***

5:87-1.4 Severability

If any provision of these rules or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the rules and to this end, the provisions of the rules are severable.

5:87-1.5 Definitions

Unless otherwise defined in this subchapter, words and terms shall have the same meanings set forth in the Municipal **Land Use** Law, [N.J.S.A. 40:55D-4](#) to 7.

"Approved course" means a course, approved by the Commissioner of the Department of Community Affairs, offered by an institution or organization or entity that satisfies the mandatory curriculum of the **Training Program** and for which members and alternate members of municipal **planning** boards, zoning boards of adjustment or combined boards shall receive certification.

"Board" means a municipal planning board, zoning board of adjustment or combined board as referenced in [N.J.S.A. 40:55D-23.3\(a\)](#).

"Certificate of Completion" means written documentation provided to the member or alternate member of a municipal **planning** board, zoning board of adjustment or combined board from the Commissioner evidencing satisfactory completion of the **Training Program** requirements.

"Commissioner" means the Commissioner of the Department of Community Affairs.

"Course provider" means an institution or organization or entity certified by the Commissioner to offer an approved course.

"Department" means the New Jersey Department of Community Affairs.

"Member" means individual serving as primary or alternate appointed representative to a municipal **planning** board, zoning board of adjustment, or combined **land use** board.

"**Training Program**" means the mandatory **basic** course in **land use** law and **planning** required by sections 2 and 3 of P.L. 2005, c. 133 ([N.J.S.A. 40:55D-23.3](#) and 23.4).

"Waiver" means a determination by the Commissioner of the Department of Community Affairs that a member or alternate member of a municipal **planning** board, zoning board of adjustment or combined board has completed a course of study which is equivalent to or more extensive than the course offered pursuant to (sections 2 and 3 of P.L. 2005, c. 133; ([N.J.S.A. 40:55D-23.3](#) and 23.4)).

5:87-1.6 Applicability; fees; board membership

(a) Except as provided in [N.J.A.C. 5:87-1.7](#), the provisions of this subchapter shall apply to any person serving as a member as of the date that the **Training Program** is first offered, and to members appointed thereafter.

(b) Municipalities may establish fees, pursuant to [N.J.S.A. 40:55D-8](#), to defray the costs of tuition for those members required to take the course in **land use** law and **planning** as required pursuant to P.L. 2005, c. 133 ([N.J.S.A. 40:55D-23.3](#) and 23.4).

(c) Municipalities shall provide to the Commissioner *[within 60 days of the effective date of these rules]* ***by September 15, 2006*** and thereafter biannually, every January and July, a current list of members, their addresses, the date of their appointment to the board, and the date of their term expiration, using GovConnect at <http://www.nj.gov/dca/lgs/> ***or by completing the List of Planning/Zoning Officials form available on the Office of Smart Growth website at www.state.nj.us/dca/osg.**

5:87-1.7 Exemptions

(a) The following members shall not be required to meet the educational requirements established pursuant to section 3 of P.L. 2005, c. 133 ([N.J.S.A. 40:55D-23.3](#)):

1. The mayor or persons designated to serve on a municipal **planning** board in the absence of a mayor who serves as a Class I member pursuant to section 14 of P.L. 1973, c. 291 ([N.J.S.A. 40:55D-23](#));
2. A member of the governing body serving as a Class III member pursuant to section 14 of P.L. 1975, c. 291 ([N.J.S.A. 40:55D-23](#)); *[and]*
3. Any person who is licensed as a professional planner and maintains a certificate of license issued pursuant to chapter 14A of Title 45 of the Revised Statutes which is current as of the date upon which that person would otherwise be required to demonstrate compliance with the provisions of sections 2 and 3 of P.L. 2005, c. 133*[;]* ([N.J.S.A. 40:55D-23.3](#) and 23.4)*[.]* ***; and***
- *4. Any person who offers proof of having completed a course in land use law and planning that is equivalent to or more extensive than that required under the provisions of [N.J.S.A. 40:55D-23.3](#) and as set forth in [N.J.A.C. 5:87-3.1](#) within 12 months of the date upon which that person would otherwise be required to demonstrate compliance with the provisions of the "Mandatory Education Bill for Planning and Zoning Board Members" ([N.J.S.A. 40:55D-23.3](#) and 23.4) and which, in the determination of the Commissioner, is equivalent to or more extensive than the course defined by the provisions of [N.J.A.C. 5:87-3.1](#).***

5:87-1.8 Compliance Period

- (a) Any member or alternate ***board*** member serving as of the date the **Training Program** is first offered shall satisfactorily complete the **Training Program** *[within 18 months of the date these rules are effective]* ***by January 17, 2008***.
- (b) Any ***board*** member appointed after the date upon which the **Training Program** is first offered shall satisfactorily complete the **Training Program** within 18 months following the date of their appointment.
- (c) A ***board*** member who fails to satisfy the requirements of the **Training Program** within the prescribed 18-month period shall be deemed *[to have vacated the position on the first day after the 18-month period has passed, and]* ***ineligible to continue to serve as a board member. Any board member deemed ineligible for failure to complete the required Training Course shall be removed as a member of the applicable board by the governing body of the affected municipality at its first regular public meeting following the expiration of the prescribed 18-month period. Any board member removed under this provision*** shall not be eligible for subsequent appointment to any board (as defined in [N.J.A.C. 5:87-1.5](#)) without first successfully completing the *[course]* ***Training Program***.

(d) Any ***board*** member serving a one-year term who does not complete the course within 18 months of the initial appointment or within 18 months from the date an approved course is first offered, whichever is later, must successfully complete the **Training Program** before becoming eligible for subsequent appointment to any board.

(e) A hearing or proceeding held, or decision or recommendation made, by a **planning** board or zoning board member shall not be invalidated if ***[the]* *a board* member** has participated in the hearing or proceeding or in the decision-making or recommendation leading to board action and that member is subsequently determined to ***[have vacated his or her membership for]* *be ineligible to serve as a board member by reason of their*** failure to complete the requirements of the **Training Program**.

SUBCHAPTER 2. DELIVERY OF THE **TRAINING PROGRAM**

5:87-2.1 Course providers

The **Training Program** shall be offered by ***approved*** course providers ***as designated by the Commissioner***. The **Training Program** shall consist of five hours of scheduled instruction and be ***effectively*** structured ***and efficiently run*** so that a ***board*** member can satisfy the course requirements in one day. The ***approved*** course providers may charge a reasonable tuition to cover the cost of offering the ***[course]* *Training Program***. The municipality whom the ***board*** member represents is responsible to pay the cost of tuition.

5:87-2.2 Written proposal for course approval

(a) ***[An]* *Any person,* institution *[or]* *,* organization ***or entity*** seeking to become ***an approved*** course provider must first receive the approval of the Commissioner that the proposed course satisfies the mandatory curriculum of the ***[course]* *Training Program*** set forth in N.J.A.C. 5:87-3. The ***person,* institution *[or]* *,* organization ***or entity*** must submit a written proposal to the Commissioner requesting approval at least 60 days in advance of the date the course is first offered. The proposal must contain the following:****

1. A description of the length of the course, total number of sessions, length of session(s), and the frequency with which they are offered;
2. A description of the course content broken down by session. Any practical work to be completed by board members shall be identified in the proposal;
3. A list of any text or materials to be used during the course. The description shall identify whether the text or materials shall be mandatory or recommended;
4. The names of the instructors and their licensing credentials, as required by [N.J.A.C. 5:87-4.1](#);
5. The number of times the course shall be offered per year; and
6. A statement of agreement that the ***person,* institution *[or]* *,* organization ***or entity*** shall notify the Commissioner if the approved course is withdrawn or changed at anytime. Notification must be received by the Department within 10 business days from date the course is withdrawn or changed, including an explanation of the changes.**

5:87-2.3 More extensive course offerings

[An] **A person**,* institution *[or]* *,* organization **or entity*** providing a more extensive course than the **Training Program** may seek approval from the Commissioner that the course, or a component thereof, satisfies the **Training Program** curriculum. The **person**,* institution *[or]* *,* organization **or entity*** must meet the requirements under [N.J.A.C. 5:87-2.2](#) to be considered for course approval.

5:87-2.4 Commissioner approval

(a) Upon determining that the course satisfies the requirements of the **Training Program** curriculum, the Commissioner shall:

1. Issue a letter designating **the person**,* institution *[or]* *,* organization **or entity*** as an approved course provider, setting forth any terms or conditions of such approval; and
2. Place the name of the **person**,* institution *[or]* *,* organization **or entity*** and the course on the Department's list of approved courses only after all terms or conditions of approval are satisfied. The list shall be made available to the public at www.state.nj.us/dca/osg.

(b) When a **training program** is approved by the Commissioner, the *[institution or organization]* **approved course provider*** offering the course may include in the course description the statement "This course satisfies the requirements of the **Basic Course in Land Use Law and Planning Training Program** required pursuant P.L. 2005, c. 133 and has been approved by the Commissioner of the Department of Community Affairs."

5:87-2.5 Periodic review of approved courses

The Commissioner reserves the right to periodically review approved courses **and approved course providers*** to evaluate whether **the*** approved courses **or course providers*** continue to conform to the requirements of this chapter.

5:87-2.6 Revocation of approval

The Commissioner may revoke his or her approval of an approved course **or approved course provider*** if the course provider no longer offers the course or the approved course is no longer in conformity with the requirements of this chapter. Whenever approval is revoked or a course has been withdrawn by an *[organization]* **approved course provider***, a new proposal and the Commissioner*'s* approval of that proposal shall be required before the course may again be offered as satisfying the requirements of the **Training Program**. Course descriptions must be amended to remove the statement contained in [N.J.A.C. 5:87-4.3](#) immediately upon revocation of Commissioner*'s* approval.

SUBCHAPTER 3. MANDATORY CURRICULUM OF **TRAINING PROGRAM**

5:87-3.1 **Training Program** curriculum

(a) This subchapter sets forth the **basic** requirements for the **Training Program** curriculum. Course providers may offer one combined course for all members, or separate courses for zoning board members and **planning** board members, or for new members versus experienced members. However, the course must cover each of the topics listed in this subchapter in order to be considered for approval by the Commissioner.

(b) The **Training Program** shall have three key segments:

1. An overview of board responsibilities and differences between the boards;
2. The municipal master plan; and
3. The process of reviewing development applications.

5:87-3.2 Overview of board responsibilities and differences between the boards

(a) The purpose of ***the segment of the training course entitled*** "overview of board responsibilities and differences between the boards" ***[segment of the Training Course]*** is to provide ***[an overview]*** ***a focused view*** of the ***primary*** responsibilities for each ***[type of]*** board (**planning** boards, zoning boards and combined boards) as set forth in the Municipal **Land Use** Law, [N.J.S.A. 40:55D-1](#) et seq. (MLUL), and to identify the differences between the boards. The mandatory topics to be covered in this segment of the Training Course include:

1. The difference between **planning** boards, zoning boards and combined boards;
2. The authority for board action, including the MLUL, the Local Redevelopment and Housing Law [N.J.S.A. 40A:12A-1](#) et seq., local ordinances passed pursuant to the MLUL, and board by-laws;
3. Board membership;

***4. The purposes of public planning;**

5. The planning process and an overview of the New Jersey planning system;*

[4.]* *6. The relationship of boards to other local entities, including, but not limited to, the governing body, environmental commission, historic preservation commission, board of education, and the local administration including the town administrator and the fire, health, police, emergency management and building officials;

[5.]* *7. The primary responsibilities of the **planning** board, including approval of, and amendment to, the master plan, conducting a master plan re-examination report, recommendations as to the official map or any amendment thereto, declaring an "area in need of redevelopment" and reviewing proposed redevelopment plans, preparation of the capital improvement program, and the development and/or review of site plan, subdivision and zoning ordinances;

[6.]* *8. The primary responsibilities of the zoning board, including the grant of variances from the zoning ordinance, interpretation of the zoning ordinance, decisions on appeals of alleged errors of administrative officers' interpretation of the zoning ordinance, and preparation of an annual report;

[7.]* *9. Conflicts of interest set forth in [N.J.S.A. 40:55D-23](#)b, applicable to **planning** boards, and [N.J.S.A. 40:55D-69](#), applicable to boards of adjustment;

[8.]* *10. The requirements of the Local Government Ethics Law, in which every municipal board member and employee must file a financial disclosure statement pursuant to [N.J.S.A. 40A:9-22.4](#); and

[9.]* *11. Upholding the requirements of the Open Public Meetings Act or "Sunshine Law," [N.J.S.A. 10:4-6](#) et seq., including scheduling and noticing meetings; conducting open and closed meeting sessions; and consequences of violating the Sunshine Law.

(b) In the course of covering the topics in the section, the approved course shall identify and describe:

1. The contents of a master plan;
2. The contents of a site plan;
3. The contents of a subdivision and zoning ordinance;
4. The relationship of the master plan to a zoning ordinance;
5. A variance and a waiver; and
6. The differences between C and D variances and permitted, non-conforming and conditional uses.

5:87-3.3 The municipal master plan

(a) The purpose of the "municipal master plan" segment of the **Training Program** is to provide an overview of the elements of a master plan; development and reexamination of the master plan; the relationship of the master plan to the ordinances and regulations implemented by the boards, and the availability of certain **planning** tools to implement the vision of the master plan. Required areas for discussion in this segment shall include, but are not limited to:

1. Review of the mandatory and optional elements of the master plan as required by the Municipal **Land Use** Law, [N.J.S.A. 40:55D-1](#) et seq. (MLUL). The overview of the master plan elements may also include a review of other **planning** elements not necessarily addressed in the MLUL, such as the community history, the community vision, neighborhood preservation plans, a design element and redevelopment plans;

2. Background studies that inform the master plan, including, but not limited to:

i. The population, employment and housing characteristics of the municipality and the relationship of the information to population, employment and household projections contained in the State Development and Redevelopment Plan adopted pursuant to the State **Planning** Act, [N.J.S.A. 52:18A-203](#), the applicable Metropolitan **Planning** Organization, and the Council on Affordable Housing;

ii. The Natural Resources Inventory prepared by the Environmental Commission;

iii. The Historic Preservation Plan prepared by the Historic Preservation Commission;

iv. Brownfields inventory;

v. The build-out analysis;

vi. The master plan reexamination reports prepared according to the MLUL;

vii. The zoning board of adjustment's annual report; and

viii. The processes of cross-acceptance, plan endorsement and center designation set forth in the State **Planning** Act, [N.J.S.A. 52:18A-203](#) et seq., and the State **Planning** Rules, [N.J.A.C. 5:85](#); and

3. Discussion on **smart growth planning** principles, redevelopment, center-based development, transit villages, clustering and transfer of development rights ***and zoning*** as **planning** concepts and tools available to **planning** boards to implement the vision of the master plan for balancing future development and conservation in the municipality. ***In addition, region-specific issues such as the Right to Farm Act, [N.J.S.A. 4:1C-1](#) et seq., should be discussed for board members from municipalities that have substantial active commercial agriculture.***

5:87-3.4 The development application review process

(a) The purpose of the development application review process segment of the **Training Program** is to provide an overview of the development applications that come before the boards pursuant to the Municipal **Land Use** Law, [N.J.S.A. 40:55D-1](#) et seq., (MLUL), the administration of the applications, the review of the applications, and the hearing process. The mandatory topics to be covered in this segment of the **Training Program** include:

1. How to read, analyze and review a land development plan. In addition to the technical aspects of reading a plan, the analysis shall explore site visits and the relationship of the plan to local design standards and regulations, including site plan, subdivision, zoning and health regulations. The analysis shall also explore the relationship to county and state regulations, including the Department of Environmental Protection environmental rules, the Department of Transportation highway access rules and the Department of Community Affairs Residential Site Improvement Standards, and, where applicable, the **land use** and development rules of the Highlands Council, New Jersey Meadowlands Commission and the Pinelands Commission. In addition to discussing appropriate board questions, the overview of the review of the plan should include the role of reports from professionals representing the board, the applicant and the public;
2. The topics that need to be addressed when reviewing administration of an application, include, but are not limited to, notices, the determination of a complete application pursuant to a duly adopted checklist, the time periods in which boards must act and automatic approvals; and
3. The elements of the hearing procedure, including, but not limited to, quorums, the role of the applicant, public and board members, including the chair, expert witnesses, evidence, public questions and testimony and board questions, the burden of proof, finding of fact, motions and resolutions, and who qualifies to vote.

SUBCHAPTER 4. **TRAINING PROGRAM** ADMINISTRATION

5:87-4.1 Standards for instructors

The instructors of the **Training Program** shall be licensed professional planners or attorneys experienced in **land use** matters and licensed to practice in New Jersey.

5:87-4.2 Standards for determining satisfactory completion of **Training Program**

(a) All course participants are required to take a test developed by the Commissioner in order to ensure that members attended and understood the course material. The test shall be a 10-question multiple-choice ***open book*** exam and shall change periodically. ***Course participants will be permitted to use the New Jersey Municipal Land Use Law along with notes and course materials for reference while completing the test.*** The Commissioner shall provide the test directly to the course providers prior to **Training Program** offerings. The course providers shall distribute the tests to ***[members]*** ***participants*** at the conclusion of the course instruction.

(b) In order to receive a certificate of completion, participants must demonstrate an adequate understanding of the **Training Program** material by attending the entire course and taking a test at the conclusion of the course instruction. Seventy percent accuracy on the test shall constitute a passing score. The tests shall be graded by the course providers.

(c) In instances where a participant attends the course but does not complete the course or achieve at least a 70 percent score on the test, the participant shall receive an incomplete for the course. The participant must retake the course and test *[within 60 days of the date of the failed or uncompleted course]* ***before the expiration of the 18-month period prescribed for completion of the required course***. Failure to satisfactorily complete the course or to re-take the test within the required time period set forth in [N.J.A.C. 5:87-1.8](#) shall result in the participant receiving no certification for the course.

(d) Within 14 days following a **Training Program** offering, the course provider shall submit to the Commissioner and the municipal clerk a list of the members who attended the **Training Program**, the date of the **Training Program**, the municipality for whom the member represents and a copy of the graded tests that have received a passing score.

(e) Upon receipt of the records indicated in (d), the Commissioner shall issue a Certificate of Completion to each **Training Program** participant who satisfactorily completes the **training program** requirements and the municipal clerk. The municipal clerk shall notify the **planning**, zoning and combined boards of each member who has received a certificate of completion upon receipt of the certificate.

5:87-4.3 Waivers

(a) A member shall be eligible for a waiver of the required **Training Program** if he or she has completed a course of study that the Commissioner deems to be equivalent or more extensive than the **Training Program**:

1. Within 12 months prior to *[the effective date of these rules]* ***July 17, 2006*** for members as of *[the effective date of these rules)]* ***July 17, 2006***; or

2. Within 12 months prior to the date of appointment for new members.

(b) Members must complete a Waiver Request Form available on the Department's website at www.state.nj.us/dca/osg, and submit a course description, official transcript or certificate of completion and other related documentation, together with a completed Waiver Request Form, to the Commissioner for review.

(c) Within 30 days of receipt of the Waiver Request Form, the Commissioner shall make a determination on the waiver request and respond in writing to the member with a copy to the municipal clerk.

5:87-4.4 Record retention

(a) The following records pertaining to satisfactory completion of the **training program** shall be maintained by the Department for three years after expiration of appointment, whether due to the end of a term, automatic vacation from a board, and/or resignation:

1. The name and address of the member;

2. The date of appointment to a board;

3. The date(s) when the member took an approved course;
 4. Satisfactory completion of the course; and
 5. Copies of the graded tests.
- (b) A copy of the Certificates of Completion shall be permanently maintained by the Department.